

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

834L0629

SENATE BILL NO. 192

Introduced by: Senators Hansen (Tom) and Nesselhuf and Representatives Garnos, Elliott, Kroger, and O'Brien

1 FOR AN ACT ENTITLED, An Act to establish wine shipper licenses and to provide for certain
2 shipments of wine.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The secretary of the Department of Revenue and Regulation may issue a wine
5 shipper license to the owner or operator of any farm winery located within or outside the state.
6 The licensee shall identify the brands of wines that may be shipped in application for the
7 license. A license may be issued and renewed for an annual fee of one hundred dollars, which
8 is in lieu of all other license fees required by chapter 35-4. The fee shall be deposited in the
9 general fund.

10 Section 2. For the purposes of this Act a, farm winery, is any winery operated by the owner
11 of a farm that produces table, sparkling, or sacramental wines from grapes, grape juice, other
12 fruit bases, or honey with a majority of the ingredients grown or produced in the state in which
13 the farm winery is located.

14 Section 3. Any holder of a farm winery license may sell and ship not more than two cases
15 of wine per month to any person in South Dakota to whom alcoholic beverages may be lawfully



1 sold. Any sale or shipment made pursuant to this section shall be for personal consumption and
2 not for resale. A case of wine is any combination of packages containing not more than nine
3 liters of wine. Any farm winery located within or outside the State of South Dakota may apply
4 to the secretary of the Department of Revenue and Regulation for issuance of a wine shipper
5 license that shall authorize the shipment of brands of wine identified in such application.

6 Section 4. The wine shipper licensee shall register labels for each type or brand to be
7 shipped with the secretary of the Department of Revenue and Regulation, in the same manner
8 and at the same rate as prescribed for wine in chapter 39-13, before sale. If the label or brand
9 states or implies in a false or misleading manner a connection with an actual living or dead
10 Native American leader, the secretary shall reject the registration of the label.

11 Section 5. The secretary of the Department of Revenue and Regulation shall promulgate
12 rules pursuant to chapter 1-26 establishing the criteria and procedures for obtaining a wine
13 shipper license, and procedures for collecting the excise taxes and procedures for adding or
14 deleting any brands of wine that may be shipped.

15 Section 6. Any applicant for a wine shipper license that does not own or have the right to
16 control the distribution of the brands of wine identified in the applicant's application may be
17 issued a shipper license for wine, if the applicant has obtained and filed with its application for
18 a shipper license, and with any subsequent application for renewal thereof, the written consent
19 of the farm winery whose brands of wine are identified therein. Any off-sale licensee that
20 purchases wine from anyone authorized to sell wine at wholesale for resale in South Dakota is
21 presumed to have the authorization of the farm winery to ship its brands. Any farm winery that
22 has provided written authorization to a wine shipper licensed pursuant to this Act to sell and
23 ship its brands of wine is not restricted by any provision of this Act from withdrawing such
24 authorization at any time. If the authorization is withdrawn, the farm winery shall promptly

1 notify the wine shipper licensee and the Department of Revenue and Regulation in writing of
2 its decision to withdraw from the wine shipper licensee the authority to sell and ship any of its
3 brands. The wine shipper licensee shall promptly file with the Department of Revenue and
4 Regulation an amendment to its license eliminating any such withdrawn brand or brands from
5 the license.

6 Section 7. A wine shipper licensee may only provide for the direct shipment of wine by
7 common carrier. The common carrier shall require the recipient to demonstrate, upon delivery,
8 that he or she is at least twenty-one years of age. The recipient shall sign an electronic or paper
9 form or other acknowledgment of receipt of the shipment of wine as approved by the secretary
10 of the Department of Revenue and Regulation. The common carrier shall submit to the
11 Department of Revenue and Regulation such information as required by the secretary. The
12 common carrier shall refuse delivery when the proposed recipient appears to be under the age
13 of twenty-one years and refuses to present valid identification. Any delivery of alcoholic
14 beverages to a minor by a common carrier constitutes a violation by the common carrier. The
15 common carrier and the wine shipper licensee are only liable for their independent acts.

16 Section 8. For purposes of this Act, each shipment of wine by a wine shipper licensee
17 constitutes a sale in South Dakota. The licensee shall collect the taxes due to the State of South
18 Dakota and remit any excise, sales, or use tax monthly to the Department of Revenue and
19 Regulation.